

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 Admiral Insurance Company,
5 Plaintiff

6 v.

7 Kabul, Inc., et al.,
8 Defendants

Case No. 2:22-cv-00177-CDS-NJK

Order Resolving Pending Motions for
Summary Judgment

[ECF Nos. 79, 126, 128]

9
10 Plaintiff Admiral Insurance Company brings this declaratory action against Kabul Inc.,
11 d/b/a Fastrip PWC Rentals and Kabul Inc, d/b/a Fastrip Food Store (collectively, “Kabul”), and
12 the Lynch Defendants: Darryl Alexander, Tommy Lynch¹ and April Black. *See* Compl., ECF No. 1.

13 This insurance dispute is enshrouded in tragedy. It involves the tragic deaths of Tammy
14 Lynch and David Raper. Tammy lost her life in a fatal jet ski accident. The jet ski was owned by
15 defendant Kabul Inc., who rented the jet ski to defendant Darryl Alexander. The Lynch Action²
16 was filed as a result. Compl., ECF No. 1 at ¶¶ 1, 22. David Raper tragically lost his life to Covid-
17 19. David’s role in this action is significant: the third-party-complaint spins on whether Kabul
18 delivered a list of purchased jet skis to Gregg Eidsness Farm Bureau Financial Services (GEFB)
19 through David. The timing of the purported delivery of the list, during the Covid-19 pandemic in
20 2020, and close in time to David’s death, who was the only GEFB employee at the time due to
21 Covid-19,³ raises questions about if and when delivery occurred, which is the center of Kabul’s
22 action against GEFB.

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25 ¹ Tommy Lynch is the administrator of the estate of Tammy Lynch.

26 ² The separate action is 2:21-cv-01981-ART-DJA.

³ *See* Dec. 1, 2021 Email, Pl.’s Ex. 5, ECF No. 128-7 at 2 (“At the time all of this took place our office was down to one employee due to Covid. That one employee has since died due to Covid.”)

This order addresses the pending motions for summary judgment. ECF Nos. 79 (GEFB); 126 (Kabul and Alexander); 128 (Admiral). On July 17, 2024, I held a hearing on Kabul, Alexander, and Admiral's motions. *See generally* July 17, 2024 Hr'g Tr.⁴ After careful consideration, I deny GEFB's motion for summary judgment, deny Kabul and Alexander's motion for summary judgment, and grant Admiral's motion for summary judgment.

I. Background

A. The Lynch Action

Kabul Inc. owns Fastrip Food Store, a convenience store, gas station, and jet ski rental business, located in Bullhead City, Arizona. Noori Dep., Def.'s Ex. 1, ECF No. 79-1 at 5. On August 21, 2020, a jet ski owned by Kabul and rented to Alexander was involved in a fatal accident, resulting in the Lynch Action, where Kabul is a named defendant. Compl., ECF No. 1 at ¶¶ 1, 22. After being sued, Kabul submitted a claim to Admiral for coverage under their May 22, 2020–May 22, 2021 insurance policy (hereinafter, “2020 Policy”). Baratti Decl., ECF No. 128-1 at ¶ 6.

B. The 2020 Policy

The Admiral insurance policy at issue in this action, provided Kabul insurance from May 22, 2020 to May 22, 2021. 2020 Policy, Pl.'s Ex. 1, ECF No. 128-3 at 5. The 2020 Policy contains exclusion g., which precludes coverage for watercrafts. *Id.* at 12. However, the 2020 Policy contains endorsements that expand coverage to watercrafts. The specified operations endorsement that covers “jet ski rental” provides that the insurance “applies only to ‘bodily injury’, ‘property damage’, ‘personal and advertising injury’ and medical expenses caused by the operations shown in the Schedule.” *Id.* at 50. The boats endorsement contains a similar provision, providing that exclusion g. “does not apply to any watercraft owned or used by or

⁴ After the hearing, Kabul and Alexander filed a supplement in support of their arguments made at oral argument. ECF No. 141. Admiral objects and moves to strike the supplement. ECF No. 143. Because the supplement contains the same arguments from Kabul and Alexander's pleadings without citations to the record, I strike the supplement as duplicative.

1 rented to the insured shown in the Schedule.” *Id.* at 32 (emphasis added). Said differently, the
2 jet ski rental must be listed on a schedule of jet skis on file with Admiral pursuant to the boats
3 endorsement in order for exclusion g. *not* to apply.

4 **C. The schedules on file with Admiral**

5 Admiral senior claims superintendent Stacie Baratti was assigned to investigate the
6 Kabul claim. *See generally* Baratti Decl., ECF No. 128-1. She found that the jet ski involved in the
7 Lynch Action is registered under the identification number YAMA3877C020. Dec. 1, 2021 Email,
8 Pl.’s Ex. 5, ECF No. 128-7 at 10 (showing jet ski purchases on June 25, 2020); *see also* Baratti Decl.,
9 ECF No. 128-1 at ¶¶ 8–9. The 2020 Policy underwriter informed Baratti that Kabul had no
10 schedule on file for the 2020 Policy. Baratti Decl., ECF No. 128-1 at ¶ 10; *see also* Baratti Dep. Vol.
11 II, Pl.’s Ex. 3, ECF No. 127-4 at 4. However, there was a schedule of 40 jet skis on file for the
12 2019–2020 policy, but the jet ski involved in the Lynch Action was not on that schedule. Baratti
13 Decl., ECF No. 128-1 at ¶ 10; *see generally* 2019–2020 schedule, Pl.’s Ex. 3, ECF No. 128-5.

14 Baratti then emailed GEFB to discuss the schedule. Baratti Decl., ECF No. 128-1 at ¶ 11.
15 GEFB informed Baratti that Kabul “always” provided it with copies of new jet ski registrations
16 every year, as well as a list of jet skis to be removed. Dec. 1, 2021 Email, Pl.’s Ex. 5, ECF No. 128-7
17 at 2. GEFB further informed Buratti that Kabul provided GEFB with jet ski registrations for the
18 jet skis it purchased on May 8, 2020, June 11, 2020, and June 25, 2020. *Id.* There is no dispute that
19 jet skis purchased on May 8 and June 11 were received by Admiral. *Id.* GEFB informed Buratti
20 that Kabul “sw[ore] that [it] provided [GEFB] employee [David Raper] with the invoice and
21 registrations” for the jet skis purchased on June 25—but there is no proof of delivery. *Id.*; *see also*
22 Baratti Decl., ECF No. 128-1 at ¶ 12. David unfortunately passed away prior to litigation and
23 GEFB could “no longer access [David’s] computer emails or records as to how the transaction
24 was handled.” Dec. 1, 2021 Email, Pl.’s Ex. 5, ECF No. 128-7 at 2; *see also* Baratti Decl., ECF No.
25 128-1 at ¶ 12.

GEFB provided Buratti with the list of jet skis purchased on May 8, June 11, and June 25, 2020. Baratti Decl., ECF No. 128-1 at ¶ 12; *see also* Dec. 1, 2021 Email, Pl.’s Ex. 5, ECF No. 128-7 at 4-12. Baratti reviewed the lists and confirmed that the list of jet skis purchased on June 25, 2020 (hereinafter, the “June 25 jet ski list”) had not been provided to Admiral prior to the date of Tammy’s accident. Baratti Decl., ECF No. 128-1 at ¶ 12; *see also* Dec. 1, 2021 Email, Pl.’s Ex. 5, ECF No. 128-7 at 4-12. Baratti also reviewed the list of jet skis that were provided for the policy period of May 22, 2021 to May 22, 2022. Baratti Decl., ECF No. 128-1 at ¶ 13. That list contained jet skis purchased in 2020 and 2021 but did not include the June 25 jet ski list. *Id.*; *see also* Renewal policy schedule, Pl.’s Ex. 6, ECF No. 128-8. Admiral considered all of the lists on file to determine if coverage was available to Kabul. Baratti Decl., ECF No. 128-1 at ¶¶ 10-13.

D. The instant action

Admiral, Kabul’s insurance provider, provided Kabul and GEFB with a Reservation of Rights Letter signed by Admiral senior claims superintendent Stacie Baratti. *See* Reservation of Rights Letter, Def.’s Ex. 2, ECF No. 79-2. In that letter, Admiral agreed to defend Kabul and Alexander in the Lynch Action, but stated that the jet ski involved in the Lynch Action “was not on any schedule on file with Admiral at the time of the Lynch accident or anytime during the effective dates of the Policy.” *Id.* at 11. Admiral also asked Kabul to provide any information that it had to show that that jet ski was on the schedule with Admiral on or before the date of the accident, as it “would be new information” that “could lead to a different coverage decision.” *Id.* at 3. The letter further stated that “Admiral reserve[d] the right to seek a judicial determination of what coverage, if any, is afforded for [Kabul] under the Policy for the claims made and damages alleged in the *Lynch* [Action], including Admiral’s obligation to provide a defense.” *Id.* at 12. Admiral then filed the instant declaratory judgment, seeking a determination on whether it has a duty to defend and indemnify Kabul and Alexander. *Id.*

Kabul answered the complaint and brought a third-party action against GEFB. ECF No. 14. The third-party-complaint contains one claim for relief: negligence. ECF No. 14 at ¶¶ 9-17.

1 Kabul alleges that GEFB is negligent for failing to provide Admiral with the June 25 jet ski list,
2 which included the jet ski involved in the Lynch Action. *Id.* Kabul also alleges that GEFB's
3 negligence resulted in Kabul having to defend himself in the instant declaratory action brought
4 by Admiral, thereby causing Kabul to face "the threat of imminent loss of insurance coverage for
5 the defense and coverage as to any damages associated with the Lynch [Action]." *Id.* at ¶ 11.

6 **E. The motions for summary judgment**

7 GEFB filed a motion for summary judgment, arguing that Kabul is unable to meet his
8 burden to prove that GEFB was negligent, as there is no proof that Kabul gave GEFB the June 25
9 jet ski list to Admiral so the jet skis on that list, including the jet ski involved in the Lynch
10 Action, were not added to Kabul's schedule for coverage. *See generally* ECF No. 79; 98. Kabul
11 argues that summary judgment is not appropriate since "the burden does not even shift to Kabul
12 because [GEFB] cannot present evidence that entitles it to judgment as a matter of law." ECF
13 No. 90 at 5. Specifically, Kabul argues that there is a genuine dispute of material fact as to
14 principal and director of Kabul, Inc, Nijibullah Noori's,⁵ recollection of the June 25 jet ski list
15 delivery. *Id.*

16 Kabul and Alexander filed a motion for summary judgment, arguing that Admiral
17 "fraudulently brought this declaratory relief action to avoid its duty to defend and indemnify"
18 them in the Lynch Action. ECF No. 126 at 2. Kabul and Alexander argue that "[s]ummary
19 judgment should be granted in [their] favor [] because the face of the policy grants coverage;
20 and, even if [Admiral] alleges ambiguities in an attempt to restrict coverage, those must be
21 construed in favor of the insured and coverage." *Id.* at 3.

22 Admiral also filed a motion for summary judgment, arguing that there is no dispute of
23 material fact that it has no duty to defend or indemnify Kabul or Alexander in the Lynch Action
24 because the jet ski involved in the accident was not on file with them, nor included in the
25 required schedule. *See generally* ECF No. 128.

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⁵ Noori was identified by Kabul's counsel as its designated 30(b)(6) witness.

1 II. Legal standard

2 Summary judgment is appropriate when the pleadings and admissible evidence “show
3 that there is no genuine issue as to any material fact and that the movant is entitled to judgment
4 as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (citing Fed. R. Civ. P. 56(c)).
5 At the summary judgment stage, the court views all facts and draws all inferences in the light
6 most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100,
7 1103 (9th Cir. 1986). If reasonable minds could differ on material facts, summary judgment is
8 inappropriate because its purpose is to avoid unnecessary trials when the facts are undisputed;
9 the case must then proceed to the trier of fact. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir.
10 1995); *see also* *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). Once the
11 moving party satisfies Rule 56 by demonstrating the absence of any genuine issue of material
12 fact, the burden shifts to the party resisting summary judgment to “set forth specific facts
13 showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256
14 (1986); *Celotex Corp.*, 477 U.S. at 323. “To defeat summary judgment, the nonmoving party must
15 produce evidence of a genuine dispute of material fact that could satisfy its burden at trial.”
16 *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th Cir. 2018). “When simultaneous cross-motions
17 for summary judgment on the same claim are before the court, the court must consider the
18 appropriate evidentiary material identified and submitted in support of”—and against—“both
19 motions before ruling on each of them.” *Tulalip Tribes of Washington v. Washington*, 783 F.3d 1151, 1156
20 (9th Cir. 2015) (citing *Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134
21 (9th Cir. 2001)).

22 III. Discussion

23 A. Arizona law applies

24 Federal courts apply the choice-of-law rules of the state courts in the district where the
25 federal court sits. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941). Nevada has adopted the
26 Restatement (Second) of Conflicts of Laws. *Golden Bear Ins. Co. v. Evanston Ins. Co.*, 564 F. Supp. 3d

1 922, 927 (D. Nev. 2021). It requires the application of the “local law of the state where the injury
 2 occurred’ unless ‘some other state has a more significant relationship’ to the occurrence under
 3 the principles stated in section 6 [of the Restatement (Second) of Conflict of Laws].” *General*
 4 *Motors Corporation v. Eighth Judicial Dist. Court*, 134 P.3d 111, 117 (Nev. 2006).

5 “Section 193 of the Restatement (Second) of Conflict of Laws indicates a more specific
 6 principle for contracts of liability insurance, indicating that ‘the validity of [such a] contract and
 7 the rights created thereby are determined by the local law of the state which the parties
 8 understood was to be the principal location of the insured risk during the term of the policy. . .
 9 .” *Golden Bear Insurance*, 564 F. Supp. 3d at 927 (quoting Restat. 2d of Conflict of Laws, § 193 (2nd
 10 1988)). Nevada courts have found this rule “is rational because ‘the principal location of the risk
 11 and costs of the policy were probably established according to’ the law of the state where the
 12 insured risk was located.” *Id.* (quoting *Sotirakis v. United Serv. Auto. Ass’n*, 787 P.2d 788, 791 (Nev.
 13 1990)).

14 Here, the 2020 Policy was issued to Kabul in Arizona and Kabul is located in Arizona.
 15 2020 Policy, Pl.’s Ex. 1, ECF No. 128-3 at 5; Noori Dep., Def.’s Ex. 1, ECF No. 79-1 at 5. There is no
 16 dispute that Kabul and GEFB’s relationship is based in Arizona. *See* ECF Nos. 79; 89. And the jet
 17 ski involved in the Lynch Action was registered in Arizona and the accident occurred in
 18 Arizona. *See* YAMA3877C020 Arizona watercraft certificate of number, Pl.’s Ex. 2, ECF No. 128-
 19 4 at 4. Therefore, Arizona law applies.

20 B. GEFB’s motion for summary judgment is denied

21 Kabul’s third-party-complaint alleges Kabul had “the practice and custom” to provide
 22 GEFB with a paper copies⁶ of “the updated list of jet skis for the insurance policies” and that
 23 both GEFB and Admiral “were aware of this practice and custom.” Third-party-complaint, ECF
 24 No. 14 at ¶ 7. Kabul alleges that it provided David with the June 25 jet ski list, which was

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 26 ⁶ Kabul’s response to Interrogatory No. 2 stated that Kabul communicated with David in person and
 “provided paper copies of documentation in person at the [GEFB] business location.” Kabul’s responses
 to interrogatories, Def.’s Ex. 3, ECF No. 79-3 at 4.

1 “pursuant to the policy and custom,” and “David and the other employees at [GEFB]. . .
2 negligently failed to provide the updated information to [Admiral] before the tragic Lynch
3 accident[.]” *Id.* at ¶ 7.

4 To succeed on a negligence claim, the plaintiff must show that the defendant owed the
5 plaintiff a duty, breach of that duty, causal connection between the defendant’s conduct and the
6 resulting injury and actual damages. *Diaz v. Phoenix Lubrication Serv., Inc.*, 230 P.3d 718, 721 (Ariz.
7 Ct. App. 2010). Negligence must be proven by a preponderance of the evidence. *Harvest v. Craig*,
8 990 P.2d 1080, 1082 (Ct. App. 1999). “The burden of proving negligence rests upon the plaintiff,
9 and it is not incumbent upon the defendant to prove an absence thereof.” *Berne v. Greyhound Parks*
10 *of Arizona, Inc.*, 448 P.2d 388, 389 (1968).

11 GEFB moves for summary judgment in its favor, arguing that Kabul failed to meet its
12 burden to prove that GEFB was negligent. *See generally* ECF No. 79. Namely, GEFB argues that
13 Kabul failed to demonstrate by a preponderance of the evidence that it actually delivered the
14 June 25 jet ski list to David or GEFB, and absent such evidence, there is no way to establish that
15 GEFB breached the duty to provide that list to Admiral. *Id.*

16 Kabul’s owner and 30(b)(6) representative Najibullah Noori stated that either he or
17 Kabul’s manager, Haroon Hakimi, delivered the June 25 jet ski list to David. Kabul’s
18 interrogatory responses, Def.’s Ex. 3, ECF No. 79-3 at 4. But Noori later testified that Hakimi
19 actually delivered the list. Noori Dep., Def.’s Ex. 1, ECF No. 79-1 at 40–42. Noori also testified
20 that only he and Hakimi would know whether the list in question was dropped off with David.
21 *Id.* at 53. So that means that there are three individuals who can possibly speak to delivery:
22 David, Noori, or Hakimi.

23 Unfortunately, David lost his life to Covid-19. There is no way to know, from David’s
24 perspective, whether Hakimi delivered the relevant updated jet ski list to GEFB on or before the
25 accident. However, GEFB’s 30(b)(6) witness Stefany Hawk explained that if David had received
26 an updated list of jet skis, typical company procedure would be for him to “have faxed it in to

1 brokerage and then kept it with his paperwork” before placing it “into [GEFB’s] file.” Hawk
2 Second Session Dep., Def.’s Ex. 7, ECF No. 79-7 at 35. GEFB’s other 30(b)(6) witness, Greg
3 Eidsness, explained that despite a search of GEFB’s files and David’s computer and his home,
4 GEFB was unable to locate any information or documents that supported the allegation that
5 Kabul delivered the updated list of jet skis to GEFB. Eidsness Dep., Def.’s Ex. 8, ECF No. 79-8 at
6 4–5 (“[GEFB] looked in the files where [David] stored his records” and “verified that there were
7 no more records at his house.” After searching David’s files, GEFB “couldn’t find anything
8 related” to the June 25 jet ski list that Kabul allegedly dropped off with David.)

9 Noori explained that Kabul’s normal practice was to purchase jet skis, register the newly
10 purchased jet skis with “Arizona Fish and Game,” and submit a copy of the registrations to
11 GEFB. Noori Dep., Def.’s Ex. 1, ECF No. 79-1 at 28, 38, 40. Noori stated that Kabul provided
12 GEFB with a list of registered jet skis “[e]very year” as a company policy, regardless of whether
13 GEFB asked for the list. *Id.* at 39. Noori further stated that Hakimi was responsible for jet ski
14 documentation and registration and would have been the only Kabul employee to deliver such
15 documentation to GEFB. *Id.* at 40–41. As Kabul’s 30(b)(6) witness, Noori was required to
16 “testify about information known or reasonably available to the organization,” including Topic
17 19 of the 30(b)(6) Notice: the “alleged delivery of an ‘updated jet ski list’ to Eidsness’ employee
18 David in June 2020.” Notice of 30(b)(6) dep., Def.’s Ex. 4, ECF No. 79-1 at 7. Noori failed to do
19 so. He testified that he had not discussed the alleged delivery with Hakimi prior to testifying or
20 answering interrogatory questions because he did not want any of his employees to know Kabul
21 was involved in a lawsuit and “just want[ed] to keep it as quiet as possible.” *Id.* at 42. Noori
22 stated that his answers were “based off [his] memory” and past conversations he had with
23 Hakimi. *Id.* at 42. Noori could not recall how many lists of registered jet skis Hakimi delivered to
24 GEFB in the summer of 2020, but knew it was more than one list. *Id.* When asked whether he
25 recalled “having three separate conversations with [Hakimi] saying, ‘Did you drop that off,’ and
26 him saying, ‘Yes?’”, Noori answered in the affirmative. *Id.* However, when pressed on whether he

1 had “an independent memory of four separate times that [he] asked [Hakimi] if he had taken in
2 lists and he said yes[,]” Noori admitted that he only had a general memory of Hakimi delivering
3 multiple list at different times over the summer of 2020. *Id.* at 42. Noori claimed to “remember”
4 that the jet ski rented by Alexander was “[on] the very last list because of the date of
5 registration.” *Id.* at 43. But he later clarified that he made that realization after Kabul received
6 the Reservation of Rights letter from Admiral; he cross referenced the jet ski number and
7 realized that the jet ski in question was among the last group of jet skis Kabul purchased that
8 summer, and that the jet ski was not on schedule with Admiral. *See id.*

9 In opposition to the motion, Kabul argues that Noori’s statements are sufficient to prove
10 that Hakimi delivered the June 25 jet ski list to GEFB. ECF No. 90 at 6. However, at best,
11 Noori’s statements establish that Hakimi was responsible for delivering the list of newly
12 purchased jet skis to GEFB. But Noori’s testimony regarding delivery is nothing more than a
13 pronouncement, unsupported by evidence, that he believed Hakimi delivered the June 25 jet ski
14 list to GEFB. This leaves only Hakimi’s recollection of delivery, which is not presently before the
15 court. It is unclear why Noori decided not to discuss the matter with Hakimi or why Kabul
16 elected to forego submitting a statement from Hakimi into evidence. This is a major gap in
17 evidence to support Kabul’s motion, especially since he is the only other person beside Hakimi
18 who could give clarity regarding the delivery.

19 But, summary judgment for a defendant is appropriate when the plaintiff “fails to make a
20 showing sufficient to establish the existence of an element essential to that party’s case, and on
21 which that party will bear the burden of proof at trial.” *Celotex Corp.*, 477 U.S. at 322. The element
22 essential to Kabul’s argument here is duty—if Kabul provided GEFB with the June 25 jet ski list,
23 then GEFB would have a duty to provide that list up the chain to Admiral. Kabul argues that
24 there remains a genuine issue of fact on whether Kabul provided the June 25 jet ski list to GEFB
25 based on Noori’s recollection of delivery. ECF No. 90 at 5. While there is no additional evidence
26 to corroborate Noori’s version of events (that Hakimi provided GEFB with the June 25 list), “[a]

1 judge must not grant summary judgment based on [their] determination that one set of facts is
 2 more believable than another.” *Nelson v. City of Davis*, 571 F.3d 924, 929 (9th Cir. 2009). Whether
 3 to believe Noori’s inconsistent version of delivery or GEBF’s version that no delivery occurred “is
 4 just the type of credibility determination that must be left to the factfinder[] and not made by a
 5 judge on summary judgment.” *Id.* Accordingly, GEBF’s motion for summary judgment is denied.
 6 A jury will decide whether Noori’s version of events is believable, or not.

7 **C. Kabul and Alexander’s motion for summary judgment is denied and Admiral’s**
 8 **motion for summary judgment is granted**

9 As discussed above, it is undisputed that the jet ski involved in the Lynch Action was not
 10 on any schedule of jet skis on file with Admiral. Kabul and Alexander argue that Admiral still
 11 has a duty to defend and indemnify them because ambiguity in the 2020 Policy must be
 12 construed in favor of coverage. *See generally* ECF No. 126.⁷ Admiral argues that it is entitled to
 13 summary judgment because there is no coverage for Kabul, which means there is no duty to
 14 defend and indemnify Kabul and Alexander. *See generally* ECF No. 128.

15 ***1. The insurance policy is not ambiguous***

16 “An insurance policy ‘must be read as a whole, so as to give a reasonable and harmonious
 17 effect to all of its provisions.’” *Nat’l Fire Ins. Co. v. James River Ins.*, 162 F. Supp. 3d 898, 903 (D. Ariz.
 18 2016) (quoting *Charbonneau v. Blue Cross*, 634 P.2d 972, 975 (Ariz. Ct. App. 1981)). Courts must
 19 “‘construe the written terms of [the policy] to effectuate the parties’ intent,’ and ‘to protect the
 20 reasonable expectations of the insured.’” *Id.* at 904 (quoting *Liberty Ins. Underwriters, Inc. v. Weitz*
 21 *Co.* 158 P.3d 209, 212 (Ariz. Ct. App. 2007)). In doing so, “the Policy’s language ‘must be viewed
 22 from the standpoint of the average layman who is untrained in the law or the field of insurance.’”
 23 *Id.* (quoting *Liritis v. Am. Family Mut. Ins. Co.*, 61 P.3d 22, 25–26 (Ariz. Ct. App. 2002)). A policy
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 26 ⁷ Kabul and Alexander’s motion contains a section titled “Further application of the above law to these facts and analysis.” ECF No. 126 at 13–19. This section is bereft of any points or authorities so is not considered in resolving this motion. *See* LR 47-3.

term is ambiguous if it is susceptible to two or more reasonable interpretations that conflict. *Teufel v. Am. Family Mut. Ins. Co.*, 419 P.3d 546 (Ariz. 2018).

Kabul and Alexander argue that the 2020 Policy endorsement for boats and exclusion g. is ambiguous and ask the court to interpret it to mean that jet skis are not excluded under exclusion g., thereby granting coverage for all jet skis owned by Kabul. ECF No. 126 at 11. There are two problems with this argument. First, Kabul and Alexander fail to explain how either endorsement is ambiguous. Second, even if the boats endorsement or exclusion g. do not apply, the specified operations endorsement clearly states that policy coverage is limited to jet skis on schedule.

There is nothing ambiguous about the boats endorsement. It clearly indicates that it applies to certain watercraft, that is, it provides coverage to jet skis on the schedule with Admiral. 2020 Policy, Pl.'s Ex. 1, ECF No. 128-3 at 32. It also clearly states that section I of exclusion g. "does not apply to any watercraft owned or used by or rented to the insured shown in the Schedule." *Id.* Exclusion g. is not ambiguous. It clearly states that "watercraft owned or operated by or rented or loaned to any insured" is not covered under the policy.⁸ *Id.* at 10, 12. In other words, exclusion g. excludes jet skis from coverage under the policy; jet skis are only covered through endorsements, including the boats endorsement, that expand coverage to watercraft on schedule with Admiral. *Id.* at 32. Even if the boats endorsement or exclusion g. do not apply, the specified operations endorsement clearly states that there is only insurance coverage for jet ski operations on schedule with Admiral. *Id.* at 50.

Kabul and Alexander also argue that the rules of contract interpretation require a reading of exclusion g. that results in coverage, not exclusion, of all jet skis. ECF No. 126 at 13. Under Arizona law,⁹ the interpretation of a contract is a question of law. *Rand v. Porsche Fin.*

⁸ Exclusion g. does not apply to watercraft that the insured does *not* own, but that is not an issue here because there is no dispute that Kabul owned the jet ski in question. *See* 2020 Policy, Pl.'s Ex. 1, ECF No. 128-3 at 12; *see also* Jet ski purchases, Pl.'s Ex. 5, ECF No. 128-7 at 10.

⁹ Kabul and Alexander erroneously use Nevada case law to support this argument. *See* ECF. No. 126 at 12.

1 *Servs.*, 167 P.3d 111, 121 (Ariz. Ct. App. 2007). “A general principle of contract law is that when
 2 parties bind themselves by a lawful contract, the terms of which are clear and unambiguous, a
 3 court must give effect to the contract as written.” *Grubb & Ellis Mgmt. Servs., Inc. v. 407417 B.C.*,
 4 *LLC*, 138 P.3d 1210, 1213 (Ariz. Ct. App. 2006). And “[w]here the intent of the parties is
 5 expressed in clear and unambiguous language, there is no need or room for construction or
 6 interpretation and a court may not resort thereto.” *Mining Inv. Grp., LLC v. Roberts*, 177 P.3d 1207,
 7 1211 (Ariz. Ct. App. 2008) (quoting *Goodman v. Newzona Inv. Co.*, 421 P.2d 318, 320 (1966)). All
 8 Kabul and Alexander write to support their position is: “This is the only reasonable reading
 9 because if the page is read how ADMIRAL suggests, the result is that KABUL, INC. paid over
 10 \$30,000 for no coverage on any of its jet skis even though it was purchasing the 2020 policy of
 11 insurance to cover its specified operation of its jet ski rental business.” ECF No. 126 at 13. This is
 12 a conclusory statement, lacking in any analysis explaining how exclusion g. is ambiguous. The
 13 policy unambiguously states that jet skis on schedule with Admiral *are covered*. I must give effect
 14 to the policy as it is written: jet skis are excluded from coverage under exclusion g., but
 15 endorsements provide coverage to jet skis that are on schedule with Admiral. The evidence
 16 shows that the underwriting file contained a list of 40 jet skis on file with Admiral from the
 17 2019–2020 policy. *See* 2019–2020 schedule, Pl.’s Ex. 3, ECF No. 128-5. And the renewal policy for
 18 2021–2022 contained a list of jet skis purchased in 2020 and 2021, but the jet ski rented to
 19 Alexander that was involved in the Lynch Action is not on that list. *See* Renewal policy schedule,
 20 Pl.’s Ex. 6, ECF No. 128-8.

21 ***2. Admiral has no duty to defend Kabul in the Lynch Action***

22 A liability insurer’s duty to defend generally arises “[i]f the complaint in the action . . .
 23 upon its face alleges facts which come within the coverage of the liability policy.” *Quihuis v. State*
 24 *Farm Mut. Auto. Ins. Co.*, 334 P.3d 719, 727 (Ariz. 2014) (quoting *Kepner v. W. Fire Ins. Co.*, 509 P.2d
 25 222, 224 (1973)). However, in Arizona there is no absolute duty to defend when “the alleged
 26 facts [in the complaint] ostensibly bring the case within the policy coverage but other facts

1 which are not reflected in the complaint plainly take the case outside the policy coverage.” *Id.*
2 (quoting *Kepner*, 509 P.2d at 224). “An insurance policy ‘must be read as a whole, so as to give a
3 reasonable and harmonious effect to all of its provisions.” *National Fire Ins. Company of Hartford*, 162
4 F. Supp. 3d at 903 (quoting *Charbonneau v. Blue Cross*, 634 P.2d 972, 975 (Ariz. Ct. App. 1981)).
5 And, the court must “construe the written terms of [the policy] to effectuate the parties’ intent,
6 and ‘to protect the reasonable expectations of the insured.” *Id.* at 904 (quoting *Liberty Ins.*
7 *Underwriters, Inc.*, 158 P.3d at 212).

8 Kabul argues that Admiral has a duty to defend and breached that duty by filing the
9 instant action because both Kabul and Alexander’s “alleged liability under the Lynch Complaint
10 are entitled to coverage based upon the clear language of the 2020 policy.” ECF No. 126 at 12.
11 Admiral counters that it has no duty to defend Kabul or Alexander because the jet ski used in
12 the Lynch Action was not on any schedule with Admiral, so it is entitled to summary judgment.
13 ECF No. 127 at 12; ECF No. 128 at 13. Specifically, Admiral argues that in interpreting the 2020
14 Policy as a whole, the jet ski used in the Lynch Action is not covered since it is not on any
15 schedule before August 21, 2020. ECF No. 127 at 12–15; ECF No. 128 at 13–15.

16 In interpreting the 2020 Policy as a whole, the specified operation endorsement expands
17 coverage to “bodily injury” caused by operations on schedule with Admiral, including jet skis.
18 2020 Policy, Pl.’s Ex. 1, ECF No. 128-3 at 50. And the boats endorsement requires a jet ski to be
19 on schedule with Admiral to be covered. *Id.* at 32. So, if a jet ski rented by Kabul is on a schedule
20 with Admiral, then exclusion g. does not apply, and Admiral is required to provide Kabul with
21 coverage for that jet ski.

22 Courts have upheld similar provisions. The Arizona Court of Appeals held that a tractor
23 was not covered under a policy because it was not listed on the policy’s schedule. *Harbor Ins. Co. v.*
24 *United Servs. Auto. Ass’n*, 559 P.2d 178, 181 (Ariz. Ct. App. 1976) (“even assuming the tractor is an
25 automobile, it is not covered by the Harbor policy since it is not one of the vehicles listed on the
26 schedule.”). In that case, the court stated that “[t]he scheduling of automobiles is not merely for

1 the convenience of assessing premiums but it itself a declaration of the limitation of the hazards
 2 assumed.” *Id.* The Second Circuit Court of Appeals similarly found that when a vehicle had to be
 3 listed under a policy for coverage and the insured failed to do so, it “was fatal to coverage under
 4 the umbrella policy.” *Arrowood Indem. Co. v. King*, 699 F.3d 735, 739 (2d Cir. 2012). And the
 5 Eleventh Circuit Court of Appeals has likewise concluded that a watercraft was not covered
 6 under the policy because it was not listed on a schedule. *Estevez v. N. Assur. Co. of Am.*, 428 F.
 7 App’x. 966, 968 (11th Cir. 2011).

8 Here, upon finding that the jet ski involved in the Lynch Action was not on the 2020
 9 Policy schedule, Admiral’s claim adjustor reviewed the schedules for both the preceding policy
 10 and subsequent renewal policy. Decl. of Staci Baratti, ECF No. 128-1 at ¶¶ 10-13. As discussed
 11 above, GEFB informed Admiral that Kabul purchased jet skis on May 8, 2020, June 11, 2020, and
 12 June 25, 2020. Dec. 1, 2021 Email, Pl.’s Ex. 5, ECF No. 128-7 at 2. The registrations for the jet skis
 13 it purchased on May 8 and June 11 were sent to Admiral to be added to Kabul’s policy. Admiral
 14 considered these additions as being part of the schedule for the 2020 policy. The claims adjustor
 15 took this action because the 2020 Policy covered any jet ski on file with Admiral, not just jet skis
 16 that would have been on the 2020 Policy schedule.¹⁰ But the registration list for the date the jet
 17 ski involved in the Lynch Action—the June 25 list—was not provided to Admiral, so it was not
 18 considered to be on the schedule. See July 17, 2024 Hr’g Tr. at 23:9–24:6; *see also* Decl. of Staci
 19 Baratti, ECF No. 128-1 at ¶ 12; *see also* Dec. 1, 2021 Email, Pl.’s Ex. 5, ECF No. 128-7 at 4–12. Kabul
 20 was informed that the jet ski involved in the Lynch Action “was not on any schedule on file with
 21 Admiral at the time of the Lynch accident or anytime during the effective dates of the Policy”
 22 and was asked to provide Admiral with any information showing otherwise. Reservation of
 23 Rights Letter, Def.’s Ex. 2, ECF No. 79-2 at 3, 11. Kabul provided no such documentation and
 24

25 ¹⁰ At the July 17 hearing, Admiral clarified that the 2020 Policy covered not only the jet skis on (if
 26 submitted) a 2020 schedule but “it would include anything that Admiral has on a schedule.” July 17,
 2024 Hr’g Tr. at 22:17–21. The issue here is that the jet skis purchased on June 25, 2020, which included
 the jet ski involved in the Lynch Action, was not submitted to Admiral.

Noori testified that Kabul did not have such documentation. Noori Dep., Def.'s Ex. 1, ECF No. 79-1 at 36. Because the jet ski that was involved in the Lynch Action was not listed on *any* schedule with Admiral, exclusion g. applies and excludes the jet ski at issue in the Lynch Action from coverage under the 2020 Policy.

Kabul and Alexander do not dispute that the jet ski at issue in the Lynch Action was not on any schedule on file with Admiral, but instead argue that because there was no schedule for the 2020 Policy, exclusion g. should not apply since it would mean that no jet ski owned by Kabul was covered under the 2020 Policy. ECF No. 132 at 10. However, even with no 2020 Policy schedule, Admiral confirmed that *any* jet ski that was on file at the time of the accident would be covered. See July 17, 2024 Hr'g Tr. at 4:2–4. Indeed, Admiral reviewed the schedule for the 2019–2020 policy and the schedule for the 2021–2022 renewal policy to determine if the jet ski at issue was on the schedule. In other words—Admiral reviewed all schedules to determine coverage. Had Admiral received the June 25 jet ski list, it would have been covered under the policy. Consequently, Admiral has no duty to defend Kabul and is entitled to summary judgment as a matter of law.

3. Admiral has no duty to defend Alexander in the Lynch Action

The boats endorsement clearly provides that coverage is extended to those “legally responsible for the use of any such watercraft” owned by the insured. 2020 Policy, Pl.'s Ex. 1, ECF No. 128-3 at 32. The boats endorsement defines watercraft as jet skis on schedule with Admiral. *Id.* Because the jet ski involved in the Lynch Action was not on any schedule with Admiral, Alexander cannot be deemed an additional insured under the Policy. Therefore, Admiral has no duty to defend and is entitled to summary judgment as a matter of law.

4. Admiral has no duty to indemnify Alexander or Kabul

“It is well settled that because the duty to defend is broader than the duty to indemnify, a determination that there is no duty to defend automatically means that there is no duty to indemnify.” *K.B. ex rel. Kanteiko v. Hartford Cas. Ins. Co.*, 608 F. App'x. 492 (9th Cir. 2015) (quoting

1 *Certain Underwriters at Lloyd's of London v. Superior Ct.*, 16 P.3d 94, 104 (2001)). Because Admiral has
2 no duty to defend Kabul or Alexander, Admiral has no duty to indemnify Kabul or Alexander.¹¹

3 **V. Conclusion**

4 IT IS THEREFORE ORDERED that GEFB's motion for summary judgment [ECF No.
5 79] is DENIED.

6 IT IS FURTHER ORDERED that Kabul and Alexander's motion for summary judgment
7 [ECF No. 126] is DENIED and that Admiral's motion for summary judgment [ECF No. 128] is
8 GRANTED.

9 Dated: August 14, 2024

10
11 
12 Cristina D. Silva
13 United States District Judge
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24 _____
25 ¹¹ Additionally, the 2020 Policy contains a punitive damages exclusion. 2020 Policy, Pl.'s Ex. 1, ECF No.
26 128-3 at 41. To the extent the Lynch Action sought punitive damages, Admiral's coverage "does not apply
to punitive or exemplary damages, in whatever form assessed, awarded against any insured." *Id.*